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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIA RECINOS,

Defendant and Appellant.

B206800

(Los Angeles County  
Super. Ct. No. BA323487)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Norm Shapiro, Judge. Affirmed.

Janice Wellborn, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Assistant  
Attorney General, Steven D. Matthews and Shawn McGahey Webb, Deputy Attorneys  
General, for Plaintiff and Respondent.

Maria Recinos appeals from the judgment entered following a jury trial in which she was convicted in count 1 of attempted second degree robbery (Pen. Code, §§ 664/211) with the finding that during the commission of the offense she personally used a deadly and dangerous weapon, to wit, a knife, within the meaning of Penal Code section 12022, subdivision (b)(1), in count 3 of carrying a dirk or dagger (Pen. Code, § 12020, subd. (a)(4)), and in count 4 of assault with a deadly weapon (Pen. Code, § 245 subd. (a)(1)). Imposition of sentence was suspended, and she was placed on formal probation for three years under certain terms and conditions. She contends count 3 must be reversed because there was insufficient evidence to support a finding that the knife found in her pocket was ready to use as a stabbing device as required by Penal Code section 12020, subdivision (a)(4). For reasons stated in the opinion, we affirm the judgment.

#### **FACTUAL AND PROCEDURAL SUMMARY**

On May 26, 2007, Lenieva Tate was living in an apartment on South Westlake in Los Angeles. On that date, after paying her rent at the front desk in the apartment lobby, she walked back toward her apartment, holding \$10 to \$15 in her hand. En route she came upon two young men, one of whom was appellant's son, who demanded she pay him "rent" and the money she had in her hand. Tate continued to walk to her apartment on the third floor. Moments after entering her apartment, Tate heard kicking against the front door and someone angrily demanding money because Tate was in their "hood."

When the door opened, Tate was confronted by appellant, who was waving a folding knife. Appellant's son was next to her, and he was armed with a screwdriver. Appellant thrust the knife several times at Tate and demanded money. Appellant's son lunged at Tate with the screwdriver. Tate responded by cutting him in the back of his neck with a set of keys. Appellant then threatened to kill Tate for cutting appellant's son. The incident ended when neighbors intervened.

On May 29, 2007, Los Angeles Police Officer Debora Orpin visited the apartment complex to conduct a follow-up investigation. During a search of appellant, the officer recovered a knife from appellant's right, front pants pocket. The knife, which had been

concealed from the officer's view, was black, oval shaped, and had a clasp on it so that it could be attached to a belt. When the officer took the knife out of appellant's pocket, it was "not extended." The knife opened in one of two ways. The officer testified, "If you want to slowly open it, all you have to do is just slide the knife open, and when you do, it locks into place . . . . [If you want] to quickly open [it, you] could go like that, and it [would] flick and lock into place . . . ." The officer testified it was fair "to say that one of the blades on that knife [could] be flung open with the flip of a wrist." The officer described the knife as having two blades of lightweight steel, exactly the same, one on each side, each approximately two to two and one-quarter inches in length. The knife could be referred to as a dual-sided knife. The casing appeared to be a heavy plastic. The officer considered it a deadly and dangerous weapon, capable of causing great bodily injury and ". . . a device that's capable of ready use as a stabbing weapon." The knife could also be used for many legal uses, to cut many items.

### **DISCUSSION**

Penal Code section 12020, subdivision (a)(4) makes it illegal to carry concealed on one's person a dirk or dagger. Subdivision (c)(24) of section 12020 of the Penal Code defines dirk or dagger and provides, "As used in this section, a 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position."

Appellant contends the evidence was not sufficient to support a conviction for possession of a concealed dirk or dagger in that at the time of the knife's discovery it was closed and, therefore, not capable of ready use as required by Penal Code section 12020, subdivision (c)(24). We disagree. Under this section a folding knife that is prohibited by Penal Code section 653k "is capable of ready use as a stabbing weapon that may inflict great bodily injury" without it being exposed and locked into position. (See *People v. Plumlee* (2008) 166 Cal.App.4th 935, 940-941.)

Penal Code section 653k makes it illegal to carry on one's person a switchblade knife with blades two inches or longer in length. A "switchblade knife" means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife or any other similar type knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever. 'Switchblade knife' does not include a knife that opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade, provided that the knife has a detent or other mechanism that provides resistance that must be overcome in opening the blade, or that biases the blade back toward its closed position."

Officer Orpin described the knife as having two blades, each blade being longer than two inches. She testified the knife could be opened in one of two ways, one of which was "with the flip of a wrist" and demonstrated the movement to the court. The subject knife was a switchblade within the meaning of Penal Code section 653k and qualified as a dirk or dagger within the meaning of Penal Code section 12020, subdivision (c)(24). Appellant's reliance on *In re Luke W.* (2001) 88 Cal.App.4th 650, 656, and *In re George W.* (1998) 68 Cal.App.4th 1208, 1210-1211, is misplaced in that the weapons in these cases were not switchblades.

### **DISPOSITION**

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.